

Conference Engrossed

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 273

# HOUSE BILL 2364

AN ACT

AMENDING TITLE 11, CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-821.03; AMENDING SECTION 11-952, ARIZONA REVISED STATUTES; AMENDING SECTION 11-952, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; PROVIDING FOR DELAYED REPEAL OF SECTION 11-821.03, ARIZONA REVISED STATUTES; RELATING TO COUNTY PLANNING AND ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 11, chapter 6, article 2, Arizona Revised Statutes,  
3 is amended by adding section 11-821.03, to read:

4 11-821.03. Transfer of development rights; definitions

5 A. THE BOARD OF SUPERVISORS MAY ESTABLISH PROCEDURES, METHODS AND  
6 STANDARDS FOR THE TRANSFER OF DEVELOPMENT RIGHTS WITHIN ITS JURISDICTION.  
7 ANY PROPOSED TRANSFER OF ALL OR ANY PORTION OF THE DEVELOPMENT RIGHTS OF A  
8 SENDING PROPERTY TO A RECEIVING PROPERTY IS SUBJECT TO THE WRITTEN APPROVAL  
9 AND CONSENT OF THE PROPERTY OWNERS OF BOTH THE SENDING PROPERTY AND THE  
10 RECEIVING PROPERTY. A COUNTY MAY NOT CONDITION A CHANGE OF ZONE ON A  
11 PROPERTY OWNER'S CONSENT TO OR OTHER PARTICIPATION IN A PROPOSED TRANSFER OF  
12 DEVELOPMENT RIGHTS, EXCEPT THAT A CHANGE OF ZONE MAY BE REQUIRED TO IMPLEMENT  
13 A DEVELOPMENT AGREEMENT IF IT IS VOLUNTARILY ENTERED INTO BY A PROPERTY OWNER  
14 OR OWNERS WITH A COUNTY FOR THE TRANSFER OF DEVELOPMENT RIGHTS CONCURRENTLY  
15 WITH THE COUNTY'S APPROVAL OF THE CHANGE OF ZONE. BEFORE ANY TRANSFER OF  
16 DEVELOPMENT RIGHTS, A COUNTY SHALL ADOPT AN ORDINANCE PROVIDING FOR:

17 1. THE ESTABLISHMENT, EXECUTION AND RECORDATION OF INSTRUMENTS TO  
18 SEVER DEVELOPMENT RIGHTS TRANSFERRED FROM THE SENDING PROPERTY AND TO AFFIX  
19 SUCH DEVELOPMENT RIGHTS TO THE RECEIVING PROPERTY. THE INSTRUMENTS SHALL BE  
20 EXECUTED BY THE PROPERTY OWNERS OF THE SENDING AND RECEIVING PROPERTY AND ANY  
21 LIENHOLDERS.

22 2. THE PRESERVATION OF THE CHARACTERISTICS OF THE SENDING PROPERTY  
23 LENDING TO THE TRANSFER OF DEVELOPMENT RIGHTS AND ASSURANCE THAT ANY OF THE  
24 PROHIBITIONS AGAINST PARTICULAR USES OR DEVELOPMENT OF THE SENDING PROPERTY  
25 DETERMINED TO BE NECESSARY TO PRESERVE SUCH CHARACTERISTICS SHALL BIND THE  
26 PROPERTY OWNER AND EVERY SUCCESSOR IN INTEREST TO SUCH PROPERTY.

27 3. A DELAY PRIOR TO TRANSFER OF DEVELOPMENT RIGHTS TO A RECEIVING  
28 PROPERTY AFTER THE SEVERANCE OF TRANSFERABLE DEVELOPMENT RIGHTS FROM A  
29 SENDING PROPERTY.

30 4. THE PURCHASE, SALE, EXCHANGE OR OTHER CONVEYANCE OF TRANSFERABLE  
31 DEVELOPMENT RIGHTS BEFORE THE RIGHTS ARE AFFIXED TO A RECEIVING PROPERTY.

32 5. PROCEDURES FOR MONITORING THE SEVERANCE, OWNERSHIP AND TRANSFER OF  
33 TRANSFERABLE DEVELOPMENT RIGHTS.

34 6. APPROPRIATE PUBLIC PARTICIPATION PROCEDURES FOR EACH TYPE OF  
35 TRANSACTION.

36 7. USE OF DEVELOPMENT AGREEMENTS AS AN OPTION FOR IMPLEMENTATION.

37 B. THE RESULTING DENSITY OR INTENSITY OF LAND USE OF THE RECEIVING  
38 PROPERTY SHALL CONFORM TO THE ADOPTED COMPREHENSIVE PLAN, AS AMENDED, IF  
39 APPLICABLE. IF A PLAN AMENDMENT IS REQUIRED PRIOR TO THE TRANSFER, IT SHALL  
40 NOT BE CONSIDERED A MAJOR PLAN AMENDMENT.

41 C. FOR THE PURPOSES OF THIS SECTION:

42 1. "ANCILLARY MILITARY FACILITY" HAS THE SAME MEANING PRESCRIBED IN  
43 SECTION 28-8461.

44 2. "DEVELOPMENT RIGHTS" MEANS THE MAXIMUM DEVELOPMENT THAT WOULD BE  
45 ALLOWED ON THE SENDING PROPERTY UNDER THE ADOPTED COMPREHENSIVE PLAN, THE

1 SPECIFIC PLAN, IF ANY, OR THE ZONING ORDINANCE, WHICHEVER PROVIDES GREATER  
2 DENSITY OR INTENSITY OF USE OR, IF APPLICABLE, BOTH, IN EFFECT ON THE DATE  
3 THE COUNTY ADOPTS AN ORDINANCE PURSUANT TO SUBSECTION A, RESPECTING THE  
4 PERMISSIBLE USE, AREA, BULK OR HEIGHT OF IMPROVEMENTS MADE TO ONE OR MORE  
5 LOTS OR PARCELS. DEVELOPMENT RIGHTS MAY BE CALCULATED AND ALLOCATED IN  
6 ACCORDANCE WITH FACTORS INCLUDING DWELLING UNITS, AREA, FLOOR AREA, FLOOR  
7 AREA RATIO, HEIGHT LIMITATIONS, TRAFFIC GENERATION OR ANY OTHER CRITERIA THAT  
8 WILL QUANTIFY A VALUE FOR THE DEVELOPMENT RIGHTS IN A MANNER THAT WILL CARRY  
9 OUT THE OBJECTIVES OF THIS SECTION.

10 3. "HIGH NOISE OR ACCIDENT POTENTIAL ZONE" HAS THE SAME MEANING AS  
11 PRESCRIBED IN SECTION 28-8461.

12 4. "MILITARY AIRPORT" HAS THE SAME MEANING AS PRESCRIBED IN SECTION  
13 28-8461.

14 5. "RECEIVING PROPERTY" MEANS ONE OR MORE LOTS OR PARCELS WITHIN WHICH  
15 DEVELOPMENT RIGHTS ARE INCREASED UNDER THE ADOPTED COMPREHENSIVE PLAN, THE  
16 SPECIFIC PLAN, IF ANY, OR THE ZONING ORDINANCE, WHICHEVER PROVIDES GREATER  
17 DENSITY OR INTENSITY OF USE OR, IF APPLICABLE, BOTH, IN EFFECT PRIOR TO A  
18 TRANSFER OF DEVELOPMENT RIGHTS AND AN AMENDMENT TO THE ADOPTED COMPREHENSIVE  
19 PLAN, SPECIFIC PLAN OR ZONING ORDINANCE, OR A RE-ZONE OF THE PROPERTY,  
20 WHICHEVER IS REQUIRED TO IMPLEMENT THE INCREASE IN DEVELOPMENT RIGHTS. THE  
21 RECEIVING PROPERTY SHALL BE SUITABLE FOR DEVELOPMENT THAT INCLUDES THE  
22 TRANSFERRED DEVELOPMENT RIGHTS CONSISTENT WITH THE ADOPTED COMPREHENSIVE  
23 PLAN, AS AMENDED, IF APPLICABLE. RECEIVING PROPERTY DOES NOT INCLUDE LOTS OR  
24 PARCELS THAT ARE PARTIALLY OR WHOLLY LOCATED WITHIN, OR THAT INCLUDE, A HIGH  
25 NOISE OR ACCIDENT POTENTIAL ZONE OF A MILITARY AIRPORT OR AN ANCILLARY  
26 MILITARY FACILITY.

27 6. "SENDING PROPERTY" MEANS ONE OR MORE LOTS OR PARCELS THAT ARE  
28 PARTIALLY OR WHOLLY LOCATED WITHIN, OR THAT INCLUDE, A HIGH NOISE OR ACCIDENT  
29 POTENTIAL ZONE OF A MILITARY AIRPORT OR AN ANCILLARY MILITARY FACILITY, A  
30 FLOODPLAIN, NATURAL HABITAT, GEOLOGIC FEATURES, RECREATION AREA OR PARKLAND,  
31 OR LAND THAT HAS UNIQUE AESTHETIC, ARCHITECTURAL OR HISTORIC VALUE, THAT A  
32 COUNTY DETERMINES IS APPROPRIATE AND NECESSARY TO RESTRICT AGAINST PARTICULAR  
33 USES OR FUTURE DEVELOPMENT THAT WOULD IMPAIR OR PRECLUDE PRESERVATION OF THE  
34 CHARACTERISTIC OR CHARACTERISTICS OF THE PROPERTY OR TO PROTECT THE PUBLIC  
35 BECAUSE OF HEALTH OR SAFETY CONCERNS.

36 7. "TRANSFER OF DEVELOPMENT RIGHTS" MEANS THE PROCESS BY WHICH  
37 DEVELOPMENT RIGHTS FROM ONE OR MORE SENDING PROPERTIES ARE AFFIXED TO ONE OR  
38 MORE RECEIVING PROPERTIES.

39 Sec. 2. Section 11-952, Arizona Revised Statutes, is amended to read:

40 11-952. Intergovernmental agreements and contracts

41 A. If authorized by their legislative or other governing bodies, two  
42 or more public agencies or public procurement units by direct contract or  
43 agreement may contract for services or jointly exercise any powers common to  
44 the contracting parties and may enter into agreements with one another for  
45 joint or cooperative action or may form a separate legal entity, including a

1 nonprofit corporation, to contract for or perform some or all of the services  
2 specified in the contract or agreement or exercise those powers jointly held  
3 by the contracting parties.

4 B. Any such contract or agreement shall specify the following:

5 1. Its duration.

6 2. Its purpose or purposes.

7 3. The manner of financing the joint or cooperative undertaking and of  
8 establishing and maintaining a budget therefor.

9 4. The permissible method or methods to be employed in accomplishing  
10 the partial or complete termination of the agreement and for disposing of  
11 property upon such partial or complete termination.

12 5. If a separate legal entity is formed pursuant to subsection A, the  
13 precise organization, composition, title and nature of the entity.

14 6. Any other necessary and proper matters.

15 C. No agreement made pursuant to this article shall relieve any public  
16 agency of any obligation or responsibility imposed upon it by law.

17 D. Except as provided in subsection E, every agreement or contract  
18 involving any public agency, board or commission made pursuant to this  
19 article shall, prior to its execution, be submitted to the attorney for each  
20 such public agency, board or commission, who shall determine whether the  
21 agreement is in proper form and is within the powers and authority granted  
22 under the laws of this state to such public agency, board or commission.

23 E. A federal department or agency which is a party to an agreement or  
24 contract made pursuant to this article is not required to submit the  
25 agreement or contract to the attorney for the federal department or agency  
26 unless required under federal law.

27 F. Any agreement or contract submitted to the attorney general shall  
28 be filed with the secretary of state and shall become effective on the date  
29 provided in the agreement. The secretary of state shall prepare a  
30 cross-index of the names of all public agencies which coordinate with the  
31 attorney general and secretary of state and file an agreement under this  
32 section.

33 G. Any agreement or contract submitted to an attorney other than the  
34 attorney general shall be filed with the secretary of state if the agreement  
35 affects more than one county and shall be filed with the county recorder if  
36 only one county is affected and shall become effective on the date provided  
37 in the agreement.

38 H. Appropriate action by ordinance, resolution or otherwise pursuant  
39 to the laws applicable to the governing bodies of the participating agencies  
40 approving or extending the duration of the agreement or contract shall be  
41 necessary before any such agreement, contract or extension may be filed or  
42 become effective.

43 I. If a school district is a party to an agreement made pursuant to  
44 subsection A, the parties to such agreement may extend the duration of the  
45 agreement by notification to the secretary of state if the agreement is filed

1 pursuant to subsection F. Such agreement may be extended as many times as is  
2 desirable, but each extension may not exceed the duration of the previous  
3 agreement.

4 J. Payment for services under this section shall not be made unless  
5 pursuant to a fully approved written contract.

6 K. A person who authorizes payment of any monies in violation of this  
7 section is liable for the monies paid plus twenty per cent of such amount and  
8 legal interest from the date of payment.

9 L. Notwithstanding any other provision of law, public agencies may  
10 enter into a contract or agreement pursuant to this section with the superior  
11 court, justice courts and police courts for related services and facilities  
12 of such courts for a term not to exceed ten years, with the approval of such  
13 contract or agreement by the presiding judge of the superior court in the  
14 county in which the court or courts which provide the facilities or services  
15 are located.

16 M. A COUNTY WITH A POPULATION OF MORE THAN ONE MILLION TWO HUNDRED  
17 THOUSAND PERSONS MAY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH A CITY OR  
18 TOWN TO ALLOW THE CITY OR TOWN TO ENFORCE THE PROVISIONS OF THE COUNTY'S  
19 ORDINANCES REGULATING ADULT ENTERTAINMENT BUSINESSES AND THE COUNTY'S  
20 BUILDING CODES, EXCLUDING THE ISSUANCE OF LICENSES OR PERMITS, IN A SPECIFIED  
21 PORTION OF THE COUNTY. AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO THIS  
22 SUBSECTION SHALL APPLY ONLY TO A PORTION OF A COUNTY THAT IS ENTIRELY  
23 SURROUNDED BY ONE OR MORE CITIES OR TOWNS.

24 Sec. 3. Section 11-952, Arizona Revised Statutes, as amended by  
25 section 2 of this act, is amended to read:

26 11-952. Intergovernmental agreements and contracts

27 A. If authorized by their legislative or other governing bodies, two  
28 or more public agencies or public procurement units by direct contract or  
29 agreement may contract for services or jointly exercise any powers common to  
30 the contracting parties and may enter into agreements with one another for  
31 joint or cooperative action or may form a separate legal entity, including a  
32 nonprofit corporation, to contract for or perform some or all of the services  
33 specified in the contract or agreement or exercise those powers jointly held  
34 by the contracting parties.

35 B. Any such contract or agreement shall specify the following:

36 1. Its duration.

37 2. Its purpose or purposes.

38 3. The manner of financing the joint or cooperative undertaking and of  
39 establishing and maintaining a budget therefor.

40 4. The permissible method or methods to be employed in accomplishing  
41 the partial or complete termination of the agreement and for disposing of  
42 property upon such partial or complete termination.

43 5. If a separate legal entity is formed pursuant to subsection A, the  
44 precise organization, composition, title and nature of the entity.

45 6. Any other necessary and proper matters.

1           C. No agreement made pursuant to this article shall relieve any public  
2 agency of any obligation or responsibility imposed upon it by law.

3           D. Except as provided in subsection E, every agreement or contract  
4 involving any public agency, board or commission made pursuant to this  
5 article shall, prior to its execution, be submitted to the attorney for each  
6 such public agency, board or commission, who shall determine whether the  
7 agreement is in proper form and is within the powers and authority granted  
8 under the laws of this state to such public agency, board or commission.

9           E. A federal department or agency which is a party to an agreement or  
10 contract made pursuant to this article is not required to submit the  
11 agreement or contract to the attorney for the federal department or agency  
12 unless required under federal law.

13           F. Any agreement or contract submitted to the attorney general shall  
14 be filed with the secretary of state and shall become effective on the date  
15 provided in the agreement. The secretary of state shall prepare a  
16 cross-index of the names of all public agencies which coordinate with the  
17 attorney general and secretary of state and file an agreement under this  
18 section.

19           G. Any agreement or contract submitted to an attorney other than the  
20 attorney general shall be filed with the secretary of state if the agreement  
21 affects more than one county and shall be filed with the county recorder if  
22 only one county is affected and shall become effective on the date provided  
23 in the agreement.

24           H. Appropriate action by ordinance, resolution or otherwise pursuant  
25 to the laws applicable to the governing bodies of the participating agencies  
26 approving or extending the duration of the agreement or contract shall be  
27 necessary before any such agreement, contract or extension may be filed or  
28 become effective.

29           I. If a school district is a party to an agreement made pursuant to  
30 subsection A, the parties to such agreement may extend the duration of the  
31 agreement by notification to the secretary of state if the agreement is filed  
32 pursuant to subsection F. Such agreement may be extended as many times as is  
33 desirable, but each extension may not exceed the duration of the previous  
34 agreement.

35           J. Payment for services under this section shall not be made unless  
36 pursuant to a fully approved written contract.

37           K. A person who authorizes payment of any monies in violation of this  
38 section is liable for the monies paid plus twenty per cent of such amount and  
39 legal interest from the date of payment.

40           L. Notwithstanding any other provision of law, public agencies may  
41 enter into a contract or agreement pursuant to this section with the superior  
42 court, justice courts and police courts for related services and facilities  
43 of such courts for a term not to exceed ten years, with the approval of such  
44 contract or agreement by the presiding judge of the superior court in the

1 county in which the court or courts which provide the facilities or services  
2 are located.

3 ~~H. A county with a population of more than one million two hundred~~  
4 ~~thousand persons may enter into an intergovernmental agreement with a city or~~  
5 ~~town to allow the city or town to enforce the provisions of the county's~~  
6 ~~ord.nances regulating adult entertainment businesses and the county's~~  
7 ~~building codes, excluding the issuance of licenses or permits, in a specified~~  
8 ~~portion of the county. An intergovernmental agreement pursuant to this~~  
9 ~~subsection shall apply only to a portion of a county that is entirely~~  
10 ~~surrounded by one or more cities or towns.~~

11 Sec. 4. Delayed Repeal

12 Section 11-821.03, Arizona Revised Statutes, as added by this act, is  
13 repealed from and after December 31, 2009.

14 Sec. 5. Effective date

15 Section 11-952, Arizona Revised Statutes, as amended by section 3 of  
16 this act, is effective from and after December 31, 2009.

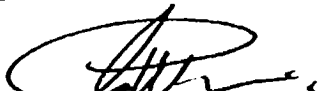
**APPROVED BY THE GOVERNOR MAY 9, 2005.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2005.**

Passed the House March 14, 2005,

by the following vote: 46 Ayes,

10 Nays, 4 Not Voting


  
Speaker of the House


  
Chief Clerk of the House

Passed the Senate April 13, 2005,

by the following vote: 22 Ayes,

5 Nays, 3 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State


H.B. 2364



HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House April 28, 2005,  
by the following vote: 47 Ayes,

8 Nays, 5 Not Voting

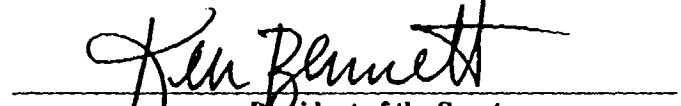
  
Speaker of the House  
*pro Tempore*

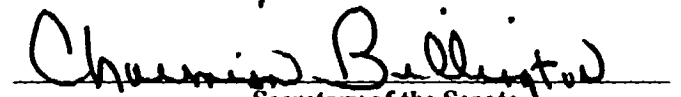
  
Asst. Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 2, 2005,  
by the following vote: 26 Ayes,

3 Nays, 1 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor


this 3rd day of May, 2005

at 9:15 o'clock a. M.

  
Secretary to the Governor

Approved this 9 day of

May, 2005,  
at 4:30 o'clock P. M.

  
Governor of Arizona

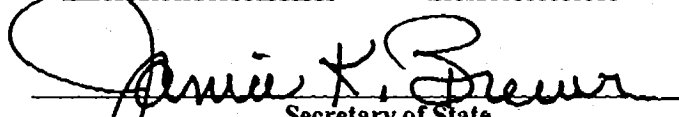
H.B. 2364

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10 day of May, 2005,

at 9:26 o'clock A. M.

  
Secretary of State